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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

No. 442

Introduced by Assembly Member Cedillo

(Coauthors: Assembly Members ~~Romero, Shelley, and Washington~~ Aroner, Gallegos, Honda, Keeley, Kuehl, Longville, Mazzoni, Romero, Shelley, Strom-Martin, Torlakson, and Washington)

(Coauthor: Senator Karnette)

February 16, 1999

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An act to add Section 16318 to the Government Code, relating to use of state funds.

### LEGISLATIVE COUNSEL'S DIGEST

AB 442, as amended, Cedillo. State funds: use to discourage unionization.

Nothing in existing law prohibits recipients of state funds from using the funds to discourage unionization.

This bill would prohibit any recipient of state funds, as defined, or resources from using ~~them~~ *the funds or resources* to discourage unionization by the recipient's employees or any other employees. The bill would also prohibit any ~~person~~ *employer* who derives revenue from state property through

a lease, concession contract, or other agreement from discouraging unionization by his or her employees. The bill would require each recipient of state funds that uses any funds to discourage unionization to keep prescribed records and make specified quarterly reports to the Labor Commissioner and to certify, under penalty of perjury, compliance with the bill's limitations on use of state funds. The bill would authorize the Labor Commissioner to audit the records of ~~persons~~ *employers* subject to the bill's recordkeeping and reporting requirements to ensure compliance with the bill. The bill would make any ~~person~~ *employer* ineligible to receive state funds if the ~~person~~ *employer* has been certified by the Labor Commissioner to be in violation of the bill's recordkeeping or reporting requirements or to have failed or refused to provide records for an audit under the bill, unless and until the Labor Commissioner certifies that the ~~person~~ *employer* is in full compliance. The bill would require the Labor Commissioner to adopt regulations to implement the bill.

The bill would make any ~~person~~ *employer* who knowingly authorizes or permits expenditure of state funds in violation of the bill liable to the state for damages equal to double the amount of the expenditure, plus *reasonable* attorney's fees and costs. The bill would authorize any taxpayer to bring an action to recover those damages on behalf of the state and would entitle a prevailing taxpayer to  $\frac{1}{2}$  a *specified percentage* of the damages recovered on behalf of the state, plus his or her attorney's fees.

The bill would make any ~~person~~ *employer*, who has been determined by a final judgment of a court to have used state funds in violation of the bill, ineligible to receive state funds for a period of 3 years from the date the judgment is entered.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The Legislature finds and declares
- 2 the following:
- 3 (1) It is the policy of the state declared in Section 923
- 4 of the Labor Code, and the policy of the National Labor



1 Relations Act, to recognize the right of employees to  
2 freedom of association in the workplace and freedom of  
3 choice in who will represent employees in collective  
4 bargaining.

5 (2) It is the policy of this state that workers should be  
6 free to choose their bargaining representative without  
7 interference from the state.

8 (3) The state currently places no limitation on the use  
9 of its funds to discourage unionization, and as a result state  
10 funds have, in fact, been used to discourage unionization.

11 (4) The expenditure of state funds to support an  
12 employer's opposition to unionization of the employer's  
13 workers does not serve the purposes for which the state  
14 funds were provided to the recipient and, thus, the  
15 expenditure of those funds to oppose unionization is a  
16 misuse and waste of state funds.

17 (b) Therefore, it is the intent of the Legislature in  
18 enacting this act to ensure that state funds are not used  
19 to discourage employees from choosing union  
20 representation.

21 SEC. 2. Section 16318 is added to the Government  
22 Code, to read:

23 16318. (a) For purposes of this section:

24 (1) ~~"Person"~~ *"Employer"* means any individual,  
25 government agency or entity, corporation,  
26 unincorporated association, partnership, or other legal  
27 entity *that employs more than one person.*

28 (2) *"Receive state funds"* means to receive state funds  
29 ~~in excess of ten thousand dollars (\$10,000) in any calendar~~  
30 ~~year in any form, including a grant, payment under a~~  
31 ~~contract, reimbursement, or other direct payment, and~~  
32 *pursuant to a competitively bid contract, a grant or a*  
33 *payment to a healthcare institution, and also includes*  
34 receipt by a subcontractor of payment for ~~performance~~  
35 ~~of any portion of a contract funded with state funds the~~  
36 *performance of services purchased by or funded by the*  
37 *state.* A manufacturer only receives state funds in  
38 connection with a sale of goods if the goods are  
39 manufactured in the state. ~~A person is deemed to have~~  
40 ~~received state funds only to the extent that the funds are~~

~~transferred for the purpose of performing a function of the state or a service for the state.~~

(3) “State funds” means any money drawn from the State Treasury or any special or trust fund of the state, and any state resources, in the form of goods or services, that are provided to any ~~person~~ employer. “State funds” also means the value of those goods and services. “State funds” include revenues or other funds received by a party to a concession contract with the state from any third party pursuant to that contract.

(4) “Unionization” means organization of employees for the purpose of collective bargaining.

(5) A recipient of state funds is deemed to use the state funds by applying the funds to operating expenses, such as employee compensation, supplies, maintenance, or utilities, or by applying the funds to capital facilities or equipment.

(6) A use of state funds shall be deemed for the purpose of discouraging unionization if it directly or indirectly supports or is in furtherance of (A) any communication in any form that advocates or directly or by implication suggests that employees should vote against representation by a union for purposes of collective bargaining, (B) hiring or consulting legal counsel or other consultants to advise on how to deter unionization or how to impede a labor organization that represents employees from fulfilling its representation responsibilities, (C) holding meetings to influence employees not to join or form a labor organization for the purpose of collective bargaining, or (D) planning or conducting activities by employer supervisors to deter the activities of a labor organization.

(b) (1) No ~~person~~ employer who receives state funds shall use, either directly or indirectly, those funds in whole or in part to discourage unionization by that ~~person’s~~ employer’s employees or any other employees. No ~~person~~ employer who derives revenue from property owned by the state and used by that ~~person~~ employer through lease, concession contract, or other agreement

1 shall discourage unionization by his or her employees  
2 who are employed on or in relation to that state property.

3 (2) Nothing in this section limits the right of  
4 individuals who are not supervisors, managers,  
5 consultants, attorneys, advisers, or contractors of a  
6 recipient of state funds to advocate for or against  
7 unionization in the facilities of the recipient to the extent  
8 not precluded by applicable law.

9 (3) Nothing in this section limits the right of any  
10 employer or union to engage in lawful activities relating  
11 to the negotiation and enforcement of a collective  
12 bargaining agreement.

13 (c) For purposes of this section, each recipient of state  
14 funds shall account for the state funds in accordance with  
15 the following:

16 (1) State funds designated by the state for use for, or  
17 to reimburse, a specific expenditure of the recipient shall  
18 be accounted for as being allocated to that expenditure.

19 (2) State funds that are not so designated shall be  
20 allocated on a pro rata basis to all expenditures of the  
21 recipient that support or are related to the purpose for  
22 which the state funds are received.

23 (d) The Labor Commissioner shall adopt regulations  
24 to implement the requirements of this section.

25 (e) (1) Every ~~person~~ *employer* who receives state  
26 funds and who uses any funds to discourage unionization  
27 shall keep accurate and complete records of all funds  
28 spent by the person to discourage unionization and for  
29 other activities and purposes. The records shall be  
30 sufficient to show whether state funds have been used to  
31 discourage unionization.

32 (2) Each ~~person~~ *employer* subject to the  
33 recordkeeping requirements of paragraph (1) during a  
34 calendar quarter shall prepare and submit to the Labor  
35 Commissioner, within 30 days following the end of the  
36 quarter, a report specifying each expenditure of state  
37 funds and each expenditure of funds to discourage  
38 unionization made by the ~~person~~ *employer* during the  
39 reported quarter.

(3) The report required by paragraph (2) shall include a statement that the representations made are true, correct, and contain no material omissions of fact to the best knowledge and belief of the ~~person~~ employer submitting the certification. A violation of this paragraph is a misdemeanor.

(4) The Labor Commissioner, on his or her own initiative or in response to a complaint the Labor Commissioner deems credible, may at any time audit the records of a ~~person~~ an employer subject to the requirements of this subdivision to ensure compliance with this section.

(5) Following a certification by the Labor Commissioner that any ~~person~~ employer has failed to comply with the recordkeeping requirements of paragraph (1) or the reporting requirements of paragraph (2), or has failed or refused to promptly provide the Labor Commissioner or his or her designated representative access to the ~~person's~~ employer's records for the purpose of conducting an audit pursuant to paragraph (4), the person shall be ineligible to receive state funds until the Labor Commissioner certifies that the ~~person~~ employer is in full compliance with those requirements.

(f) (1) Any ~~person~~ employer who knowingly authorizes or permits an expenditure of state funds in violation of this section shall be liable to the state for civil damages equal to twice the amount of the expenditure, plus reasonable attorney's fees and costs. Any taxpayer may bring an action to recover these civil damages on behalf of the state and, ~~if the taxpayer is the prevailing party, the taxpayer shall be entitled to one-half of the amount recovered on behalf of the state, plus his or her attorney's fees, which shall be included in the judgment.~~

~~(2) provided that both of the following conditions exist:~~

(A) ~~The taxpayer has first served a copy of the complaint on the Attorney General with a written disclosure of substantially all material evidence and information the taxpayer possesses.~~

1 (B) The Attorney General has either notified the  
2 taxpayer that the Attorney General has agreed to bring  
3 an action to recover funds expended in violation of this  
4 section or, after 30 days, the Attorney General has failed  
5 to agree to bring an action to recover the funds expended  
6 in violation of this section.

7 (2) If the Attorney General agrees to bring an action  
8 to recover the funds expended in violation of this section,  
9 the action shall be brought within 60 days of notifying the  
10 taxpayer of the intent of the Attorney General to do so  
11 and the taxpayer may intervene in the action.

12 (3) In any action brought under paragraph (1) all of  
13 the following provisions apply:

14 (A) The Attorney General may intervene in any  
15 action brought by a taxpayer at any time.

16 (B) The action may be dismissed only if the court and  
17 the Attorney General give written consent to the  
18 dismissal and their reasons for that consent.

19 (C) The Attorney General shall have the primary  
20 responsibility for prosecuting any action that the  
21 Attorney General initiates or in which he or she  
22 intervenes, and shall not be bound by an act of the person  
23 bringing the action.

24 (D) The Attorney General may dismiss the action  
25 notwithstanding the objections of the taxpayer initiating  
26 the action if the taxpayer has been notified by the  
27 Attorney General of the filing of the motion and the court  
28 has provided the person with an opportunity for a hearing  
29 on the motion.

30 (E) The Attorney General may settle the action with  
31 the defendant notwithstanding the objections of the  
32 taxpayer initiating the action if the court determines,  
33 after a hearing, that the proposed settlement is fair,  
34 adequate, and reasonable under all the circumstances.

35 (F) Upon a showing by the Attorney General or a  
36 defendant that unrestricted participation during the  
37 course of the litigation by the taxpayer initiating the  
38 action would interfere with or unduly delay the  
39 prosecution of the case, or would be repetitious,  
40 irrelevant, or for purposes of harassment, the court may,

1 *in its discretion, impose appropriate limitations on the*  
2 *taxpayer's participation.*

3 *(4) In any action brought under paragraph (1) in*  
4 *which the defendant is found to have violated this section,*  
5 *the taxpayer shall recover as part of the judgment the*  
6 *following applicable amounts:*

7 *(A) One-half of the amount recovered on behalf of the*  
8 *state plus reasonable attorney's fees and costs in any*  
9 *action in which the Attorney General did not participate.*

10 *(B) One-quarter of the amount recovered on behalf of*  
11 *the state plus his or her reasonable attorney's fees and*  
12 *costs in an action filed by the government but initiated by*  
13 *the taxpayer pursuant to subparagraph (A) of paragraph*  
14 *(1).*

15 *(C) Between one-quarter and one-half of the amount*  
16 *recovered on behalf of the state plus reasonable*  
17 *attorney's fees and costs in any action in which the*  
18 *Attorney General intervened after the complaint was*  
19 *filed in court. The amount shall be set by the court based*  
20 *upon the degree to which the taxpayer ultimately*  
21 *contributed to the outcome in the case.*

22 *(5) A final judgment of a court of competent*  
23 *jurisdiction stating that ~~a person~~ an employer has violated*  
24 *paragraph (1) of subdivision (b) is a ground for*  
25 *debarment of state funds for three years from the date the*  
26 *judgment is entered.*

27 *(g) The provisions of this section are severable. If any*  
28 *provision of this section or its application is held invalid,*  
29 *that invalidity shall not affect any other provision or*  
30 *application that can be given effect without the invalid*  
31 *provision or application.*